Michael P. Balaban State Bar No. 9370 1 LAW OFFICES OF MICHAEL P. BALABAN 2 10726 Del Rudini Street Las Vegas, NV 89141 3 (702)586-2964 Fax: (702)586-3023 4 E-Mail: mbalaban@balaban-law.com 5 Attorney for Plaintiff 6 7 8 UNITED STATES DISTRICT COURT 9 DISTRICT OF NEVADA 10 11 PARNELL COLVIN, CASE NO. 2:20-cv-01765-APG-EJY 12 13 PLAINTIFF'S PROPOSED VERDICT FORM Plaintiff, 14 VS. 15 M.J. DEAN CONSTRUCTION, INC., 16 17 Defendant. Trial: March 27, 2023 18 Time: 9;00 a.m. Judge: Honorable Andrew Gordon 19 20 Plaintiff PARNELL COLVIN ("Plaintiff" or "Colvin") submits his proposed jury instruction 21 as follows: 22 23 /// 24 /// 25 26 /// 27 28 1

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SPECIAL VERDICT FORM 1 2 Please answer the following questions. Your answers must be unanimous. 3 PART 1 4 DISPARATE TREATMENT 5 **Ouestion 1:** Did Parnell Colvin prove by a preponderance of the evidence that he belongs to a protected class? 6 _____ Yes _____ No 7 If your answer to Question 1 is "Yes," then answer Question 2. If you answered 8 "No," then proceed directly to Question 5. 9 Did Parnell Colvin prove by a preponderance of the evidence that he was qualified **Question 2:** 10 for his position and performing his position satisfactorily? 11 _____ Yes _____ No 12 If your answer to Question 2 is "Yes," then answer Question 3. If you answered "No," then proceed directly to Question 5. 13 Did Parnell Colvin prove by a preponderance of the evidence that he was subjected **Question 3:** 14 to an adverse employment action in that he was not permitted to work overtime and 15 was forced to perform types of work that he considered undignified? _____ Yes _____ No 16 17 If your answer to Question 3 is "Yes," then answer Question 4. If you answered "No," then proceed directly to Question 5. 18 Did Parnell Colvin prove by a preponderance of the evidence that similarly situated **Question 4:** 19 individuals outside of his protected class were treated more favorably? 20 _____ Yes _____ No 21 If your answer to Question 4 is "Yes," then answer Question 5. If you answered 22 "No," then proceed directly to Question 5. 23 PART 2 24 **HOSTILE WORK ENVIRONMENT** 25 **Question 5:** Did Parnell Colvin prove by a preponderance of the evidence that he was subjected to slurs, insults, jokes or other verbal comments or physical contact or intimidation 26 of a racial nature? 27 Yes No 28

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1		If your answer to Question 5 is "Yes," then answer Question 6. If you answered
2		"No," then proceed directly to Question 19.
3	Question 6:	Did Parnell Colvin prove by a preponderance of the evidence that the conduct was unwelcome?
4		Yes No
5		If your answer to Question 6 is "Yes," then answer Question 7. If you answered
6		"No," then proceed directly to Question 19.
7	Question 7:	Did Parnell Colvin prove by a preponderance of the evidence that the conduct was
8		sufficiently severe or pervasive to alter the conditions of his employment and create a racially abusive or hostile work environment?
9		Yes No
10		If your answer to Question 7 is "Yes," then answer Question 8. If you answered
11		"No," then proceed directly to Question 19.
12	Question 8:	Did Parnell Colvin prove by a preponderance of the evidence that he perceived the
13		working environment to be abusive or hostile?
14		Yes No
15		If your answer to Question 8 is "Yes," then answer Question 9. If you answered "No," then proceed directly to Question 19.
16 17	Question 9:	Did Parnell Colvin prove by a preponderance of the evidence that a reasonable person in his circumstances would consider the working environment to be abusive or hostile?
18		
19		Yes No
20		If your answer to Question 9 is "Yes," then answer Question 10. If you answered "No," then proceed directly to Question 19.
21	Question 10:	Did Parnell Colvin prove by a preponderance of the evidence that Kevin Gutierrez
22		was a supervisor?
23		Yes No
24		If your answer to Question 10 is "Yes," then answer Question 11. If you answered
25		"No," then proceed directly to Question 17.
26	Question 11:	Did Parnell Colvin prove by a preponderance of the evidence that he was subjected to a racially hostile work environment by Kevin Gutierrez?
27		
28		Yes No
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1 2	Question 12:	If your answer to Question 11 is "Yes," then answer Question 12. If you answered "No," then proceed directly to Question 17.
3		Did Parnell Colvin prove by a preponderance of the evidence that he suffered a tangible employment action as a result of racial harassment by Kevin Gutierrez?
4		Yes No
5		If your answer to Question 12 is "Yes," then answer Question 13. If you answered
6		"No," then proceed directly to Question 17.
7	Question 13:	Did M.J. Dean Construction prove by a preponderance of the evidence that it
8		exercised reasonable care to prevent and promptly correct the racially harassing behavior?
9		Yes No
10		If your answer to Question 13 is "Yes," then answer Question 14. If you answered
11		"No," then proceed directly to Question 17.
12	Question 14:	Did M.J. Dean Construction prove by a preponderance of the evidence that Parnell Colvin unreasonably failed to take advantage of any preventive or corrective
13		opportunities provided by M.J. Dean Construction or unreasonably failed to
14		otherwise avoid harm?
15		Yes No
16		If your answer to Question 14 is "Yes," then answer Question 15. If you answered "No," then proceed directly to Question 17.
17	Question 15:	Did M.J. Dean Construction prove by a preponderance of the evidence that it
18	Question 13.	exercised reasonable care to prevent and promptly correct the racially harassing
19		behavior?
20		Yes No
21		If your answer to Question 15 is "Yes," then answer Question 16. If you answered "No," then proceed directly to Question 17.
22	0	Did M.J. Dean Construction prove by a preponderance of the evidence that Parnell
23	Question 10.	Colvin unreasonably failed to take advantage of any preventive or corrective
24		opportunities provided by M.J. Dean Construction or unreasonably failed to otherwise avoid harm?
25		Yes No
26		If your answer to Question 16 is "Yes," then answer Question 17. If you answered
27		"No," then proceed directly to Question 17.
28		

1	Alternatively	<u>i</u>
2 3	Question 17:	Did Parnell Colvin prove by a preponderance of the evidence that he was subjected to a racially hostile work environment by a non-immediate supervisor or coworker?
4		Yes No
5		If your answer to Question 17 is "Yes," then answer Question 18. If you answered "No," then proceed directly to Question 19.
7	Question 18:	Did Parnell Colvin prove by a preponderance of the evidence that M.J. Dean Construction or a member of M.J. Dean Construction's management knew or
8		should have known of the harassment and failed to take prompt, effective remedial action reasonably calculated to end the harassment?
10		Yes No
11		If your answer to Question 18 is "Yes," then answer Question 19. If you answered
12		"No," then proceed directly to Question 19.
13		PART 3
14		RETALIATION
15 16	Question 19:	Did Parnell Colvin prove by a preponderance of the evidence that he participated in an activity protected under federal law by submitting an internal workplace complaint(s)?
17		YesNo
18		If your answer to Question 19 is "Yes," then answer Question 20. If you answered
19		"No," then proceed directly to Question 22.
20	Question 20:	Did Parnell Colvin prove by a preponderance of the evidence that M.J. Dean Construction subjected him to an adverse employment action including but not limited to, terminating plaintiff's employment and/or not hiring him back after the
21		COVID-19 shutdown terminating his employment?
22		Yes No
23 24		If your answer to Question 20 is "Yes," then answer Question 21. If you answered
		"No," then proceed directly to Question 22.
2526	Question 21:	Did Parnell Colvin prove by a preponderance of the evidence that he was subjected to an adverse employment action including but not limited to, terminating
27		plaintiff's employment and/or not hiring him back after the COVID-19 shutdown because he participated in an activity protected under federal law by submitting an
28		r y parameter and a substituting un
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1		internal workplace complaint(s).
2		Yes No
3 4		If your answer to Question 21 is "Yes," then answer Question 22. If you answered "No," then proceed directly to Question 22.
5		PART 4
6		NEGLIGENT TRAINING AND SUPERVISION
7	Question 22:	Did Parnell Colvin prove by a preponderance of the evidence that M.J. Dean Construction knew or should have known about race-based graffiti or other race-
8		based discrimination or harassment in the workplace and acted in a negligent manner?
9 10		Yes No
11		If your answer to Question 22 is "Yes," then answer Question 23. If you answered "No," then proceed directly to Question 25.
12	Question 23:	
13	Question 23.	Did Parnell Colvin prove by a preponderance of the evidence that M.J. Dean Construction failed to train or supervise its employees adequately with respect to race-based graffiti or other race-based discrimination or harassment in the
14		workplace?
15		Yes No
16 17		If your answer to Question 23 is "Yes," then answer Question 24. If you answered "No," then proceed directly to Question 25.
18	Question 24:	Did Parnell Colvin prove by a preponderance of the evidence that M.J. Dean Construction's negligence proximately caused him to suffer injuries?
19		Yes No
20		If your answer to Question 24 is "Yes," then answer Question 25. If you answered
21		"No," then proceed directly to Question 25.
22		<u>PART 5</u>
23	Question 25:	If you answered any of the following questions in exactly the manner shown below
24		then proceed directly to Questions 19.
25		Question 4: Yes
26		Question 16: No
27		Question 18: Yes
28		

1		Question 21: Yes
2		Question 24: Yes
3	Question 26:	If you answered all of the following questions in the manner shown below, stop
4		here, answer no further questions, and have the Presiding Juror sign and date the last page of this form.
5		Question 4: No, or did not have to answer Question 4.
6		Question 16: Yes, or did not have to answer Question 16.
7		Question 18: No, or did not have to answer Question 18.
8		Question 21: No, or did not have to answer Question 21.
9		Question 24: No, or did not have to answer Question 24.
10		PART 6
11 12		DAMAGES
13	Question 27:	Did Parnell Colvin prove by a preponderance of the evidence that he suffered any damages?
14		Yes No
15		If your answer to Question 27 is "Yes," then proceed directly to Question 28. If you
16 17		answered "No," stop here, answer no further questions, and have the Presiding Juror sign and date the last page of this form.
18	Question 28:	What damages, if any, do you find Parnell Colvin proved he incurred by a
19		preponderance of evidence against Defendant M.J. Dean Construction with respect to the following:
20		a. Mental, physical, emotional pain and suffering experienced:
21		\$
22		b. Past lost wages:
23		\$
24		c. Future lost wages:
25		\$
26		TOTAL \$
27	///	
28		

1		<u>PART 7</u>
2		PUNITIVE DAMAGES
3 4	Question 29:	Did Parnell Colvin prove by clear and convincing evidence that M.J. Dean Construction acted with malice, fraud, or oppression against him?
5		Yes No
6		If your answer to Question 29 is "Yes," then proceed directly to Question 30. If you answered "No," stop here, answer no further questions, and have the Presiding Juror sign and date the last page of this form.
8 9	Question 30:	Did Parnell Colvin prove by clear and convincing evidence that an officer, director or managing agent of M.J. Dean Construction expressly authorized or ratified the malicious, fraudulent, or oppressive conduct against him?
10		Yes No
11		
12		****
13 14	Dated:	
15		Presiding Juror
16		
17	After t	his form has been signed and dated, notify the Clerk that you are ready to present
18		n the courtroom.
19		
20		
21	DATED: <u>3/21</u>	LAW OFFICES OF MICHAEL P. BALABAN
22		
23 ₂₄		BY: <u>/s/ Michael P. Balaban</u> Michael P. Balaban, Esq.
25		LAW OFFICES OF MÎCHAEL P. BALABAN 10726 Del Rudini Street
26		Las Vegas, NV 89141
27		
28		
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CERTIFICATE OF SERVICE I hereby certify that pursuant to FRCP Rule 5(b)(3) and LR IC 4-1(a), a true and correct copy of the foregoing document was electronically served via the Court's CM/ECF electronic filing system to the following persons on March 21, 2023: Martin A. Little, Esq. Robert L. Rosenthal, Esq. HOWARD & HOWARD ATTORNEYS PLLC Attorneys for Defendant /s/ Michael P. Balaban Michael P. Balaban